

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>B. JUNE PALMER</b>	)	
Claimant	)	
VS.	)	
	)	
<b>DCCCA</b>	)	Docket No. 248,202
Respondent	)	
AND	)	
	)	
<b>HARTFORD ACCIDENT &amp; INDEMNITY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the August 8, 2002 Order of Administrative Law Judge John D. Clark. Respondent was assessed penalties in the amount of \$68.58, pursuant to K.S.A. 44-512a (Furse 1993), for failure to pay certain medical bills owed to orthopedic surgeon J. Mark Melhorn, M.D., for the treatment provided to claimant for her injuries suffered on April 1, 1999. The Appeals Board (Board) held oral argument on February 4, 2003.

**ISSUES**

Did the Administrative Law Judge exceed his jurisdiction in ordering respondent to pay penalties in the amount of \$68.58 pursuant to K.S.A. 44-512a (Furse 1993)?

A hearing on claimant's motion for penalties was held August 8, 2002, at which time the Administrative Law Judge ordered respondent to pay claimant penalties in the amount of \$68.58. At oral argument, the parties agreed the total amount of the medical bills in dispute was \$585.80. Claimant's request for penalties under K.S.A. 44-512a (Furse 1993) allows for a penalty in the amount of \$25 or a sum equal to 10 percent of the unpaid medical bills, whichever is larger. The parties agreed at oral argument that the \$68.58 penalty by the Administrative Law Judge should, instead, be \$58.58, if the Board finds that penalties are appropriate.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file contained herein, the Board finds the Order of the Administrative Law Judge should be modified to grant penalties in the reduced amount of \$58.58.

Claimant was receiving treatment from Dr. Melhorn as the authorized treating physician pursuant to the Order of the Administrative Law Judge. That Order had been appealed to the Board and affirmed in the Board's February 11, 2000 Order. Claimant had later requested treatment with Dr. Melhorn for both his right and left arms. That issue had also been disputed before the Administrative Law Judge, with the Judge deciding in claimant's favor. The Board affirmed that ruling in its June 25, 2002 Order.

On April 5, 2002, claimant mailed a Demand For Payment to respondent's attorney for two bills allegedly owed to Dr. Melhorn. The first bill incurred on April 10, 2001, was for \$621, or the balance remaining due and owing for that date of service. The second bill was for \$339.24 for services rendered December 31, 2001.

Respondent contended the bills were not due and owing, as respondent had disputed the bills with Dr. Melhorn pursuant to K.S.A. 44-510j, which sets out the procedure to be followed if there is a dispute between the employer or carrier and the service provider regarding the amount of a medical bill for services provided a claimant in a workers' compensation dispute.

On April 30, 2002, claimant filed his application for penalties. It is noted claimant's demand for payment specified the exact amounts of bills that were alleged to be due and owing. Respondent's attorney does not dispute that there was any confusion regarding what was being claimed. The dispute involved the amounts owed to Dr. Melhorn and whether Dr. Melhorn was in violation of the medical fee schedule.

K.S.A. 44-512a (Furse 1993) allows a claimant to bring an action for penalties when a respondent delays paying for medical compensation which is unpaid and past due.

K.S.A. 44-510j, on the other hand, sets out a procedure by which disputes over the cost of medical benefits between the employer or carrier and the service provider can be resolved. K.S.A. 44-510j does not allow an action to be brought by a claimant.

Respondent alleges that a dispute had arisen between respondent and its insurance carrier and the provider, Dr. Melhorn, over the two bills in question. However, a review of the record failed to identify any action under K.S.A. 44-510j had been brought by respondent or the insurance carrier. Instead, the bills were simply denied and payment withheld.

This resulted in claimant being placed in a position where the medical bills to his treating physician were not being paid, but claimant was, in effect, helpless to rectify the situation. Claimant's sole recourse appeared to be K.S.A. 44-512a (Furse 1993). Neither K.S.A. 44-510j nor K.S.A. 44-512a (Furse 1993) appear to stay any proceedings under K.S.A. 44-512a (Furse 1993) in the event of a dispute over a bill for services rendered. The Board finds claimant was justified in pursuing penalties, which as noted above would be his only recourse in forcing respondent to resolve the conflict between respondent and the treating physician.

Respondent's contention that K.S.A. 44-510j, in some way, stays the penalty provisions of K.S.A. 44-512a (Furse 1993) is without merit.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated August 8, 2002, should be, and is hereby, affirmed with regard to the awarding of penalties, but is modified to award the stipulated amount of \$58.58.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2003.

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BOARD MEMBER

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### **CONCURRING OPINION**

The undersigned agree with the result reached by the majority. But we disagree that penalties would be appropriate where a respondent or its insurance carrier is pursuing its

right to a review of medical bills under K.S.A. 44-510j. Penalties would not be warranted in a case where a respondent or its insurance carrier disputes whether a medical bill conforms to the medical fee schedule, has paid the undisputed portion of the bill, and is actively pursuing its right of review under K.S.A. 44-510j. In this case, there is no evidence establishing that respondent or its insurance carrier has sought review of the disputed charge. Accordingly, penalties are appropriate.

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BOARD MEMBER

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BOARD MEMBER

c: Orvel B. Mason, Attorney for Claimant  
Richard J. Liby, Attorney for Respondent  
John D. Clark, Administrative Law Judge  
Director, Division of Workers Compensation